



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Join in Amicus Brief in the case of Harvest Church v. City of Concord, No. A096604 (1st District).

MEETING DATE: March 20, 2002

PREPARED BY: Randall A. Hays, City Attorney

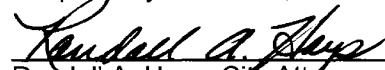
RECOMMENDATION: That the City join the Amicus Brief in the case of Harvest Church v. City of Concord.

BACKGROUND: Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

The Board of Directors of the League of California Cities is urging cities to join in the referenced amicus brief. This case involves the standard of review for a city's land use approval process. Specifically, the case is about a city's discretion to regulate the use of a major retail establishment in accordance with the City's General Plan goals of promoting and retaining retail business within the retail establishment. As you may have guessed from the title of the case, this is one in which a church acquired property on a second floor of a shopping center in the City of Concord intending to use that space as church facilities. The first floor of the shopping center contains a number of retail businesses. Subsequent to the purchase of the property the Church filed two applications for permits to use the property for church purposes. Both applications were denied with the City finding that the church's use would not be consistent with the retail center, would not promote business uses, and that parking would be inadequate. Those findings resulted in a further finding that the project was inconsistent with the General Plan and Redevelopment Plan policies favoring regional commercial uses in the particular location. The trial court found that the City abused its discretion in denying the application. In so doing, the trial court turned on its head a cardinal principle of zoning and planning law. Specifically, the trial court found that the City failed to make its General Plan consistent with its zoning. This finding by the Court is exactly backwards from what the zoning and planning laws of the State of California require local jurisdictions to do. We are required to conform our zoning with our General Plan. On that basis alone, this office recommends that the Council approve our participation in the amicus brief in this case.

Funding: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager